

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 739
Case No. 92-12
(Consent Calendar)
May 10, 1993

The Zoning Commission for the District of Columbia initiated this case to consider and adopt appropriate amendments to the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The proposed amendments are to create an expedited procedure known as the "Consent Calendar" to allow the Zoning Commission to make without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking, or other actions or relief of the Zoning Commission, including corrections of inadvertent mistakes.

Amendments to the text of the Zoning Regulations of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed.). The public hearing was held in accordance with the provisions of 11 DCMR 3021.

On December 10, 1992, the Commission conducted a public hearing in this proceeding. All testimony presented was in support of the proposed amendments. The Office of Planning (OP) by its report dated December 1, 1992 and by oral testimony at the public hearing stated that the text of the proposed amendments was primarily prepared by the Office of Zoning with input from the OP and the Office of the Corporation Counsel. OP recommended adoption of the text as advertised, stating that the proposed procedure will provide greater flexibility and efficiency in the permit and amendment process, while retaining a necessary degree of public control.

Advisory Neighborhood Commission 3D submitted correspondence for the record which indicated specific concerns about the proposed amendments and requested that the concerns be addressed and clarified prior to the Commission taking further action in the case. The concerns of the ANC are summarized as follows:

- o That the amendments as proposed do not adequately define minor modifications or technical corrections, therefore, there is too much room for interpretation;
- o That the seven-day response time is not a reasonable amount of time for parties to formulate a response; and
- o That the notification provisions should also include affected property owners.

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Advisory Neighborhood Commission 2A (Foggy Bottom and West End ANC) voted to oppose the amendments, indicating concerns about adequate notice and the interpretation of "minor modifications".

A representative of the law firm of Linowes and Blocher provided testimony in support of the proposed amendment and made suggestions for minor technical changes, including the unnecessary requirement for a certified copy of an order, the need for service of responses on the applicant, and the suggestion that referrals to other government agencies may cause the process to become a much longer process and therefore a time frame for completion of the process should be included in the amendments.

A representative of the District of Columbia Building Industry Association testified that the Association supports the proposed amendments.

A representative of the law firm of Wilkes, Artis, Hedrick and Lane provided testimony in support of the proposed amendments and indicated concern about what happens to an item that is removed from the Consent Calendar because a Commissioner did not agree or had some personal bias; whether that item could be discussed and voted on during the same public meeting session, or whether it then had to go through the hearing process.

The Commission believes that the inclusion of terminology defining a minor modification is appropriate for clarity of the proposed amendments.

The Commission believes that the notification provisions, and the seven-day response time, as proposed, are adequate for a procedure that relates to previously approved final orders and other actions or relief of the Commission covered by these proposed amendments.

The Commission believes that the requirement of a certified copy of the previously approved order is more stringent than necessary for this procedure and is satisfied that only a copy of the order is sufficient.

The Commission further believes that all responses to modification requests should be served on the applicant by the responding party.

The Commission believes that its proposed action to approve the Consent Calendar is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

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The proposed decision to approve the amendments was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated February 23, 1993, found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, and are not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded ANC-3D and ANC-2A the "great weight" consideration to which they are entitled.

A notice of proposed rulemaking was published in the District of Columbia Register on February 26, 1993 (40 DCR 1597). As a result of the publication of the notice, comments dated March 26, 1993, were submitted by the District of Columbia Building Industry Association (DCBIA).

On May 10, 1993 at its regular monthly public meeting, the Zoning Commission for the District of Columbia considered draft Z.C. Order No. 739 and the above-referenced comments received taking final action in this case. The Commission determined that it does not agree with DCBIA that the definition of "minor modifications" in subsection 3030.1 is too narrow, and is satisfied with the subsection as written. Additionally, the Commission does not agree with DCBIA that the vote of two Commission members should be required to remove an item from the consent calendar, and is satisfied that it is appropriate to remove an item from the consent calendar if any one Commission member thinks it is appropriate.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the amendments to the Zoning Regulations to create an expedited procedure known as the Consent Calendar. The specific amendments to the Zoning Regulations are as follows:

1. Amend Subsection 2407.9 to read as follows:

2407.9 Any modifications proposed to an approved planned unit development that cannot be approved by the Zoning Regulations Division shall be submitted to and approved by the Zoning Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for such minor modifications and technical corrections as provided for in Section 3030 of this title.

2. Amend the text of the Zoning Regulations by adding the following new section:

3030 Consent Calendar

3030.1 There is hereby created an expedited procedure to be known as the "Consent Calendar" in order to allow the Zoning Commission, in the interest of efficiency, to make without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking or other actions or relief of the Zoning Commission, including corrections of inadvertent mistakes. For purposes of this section, minor modifications shall mean modifications of little or no importance or consequence.

3030.2 Any party to a proceeding before the Zoning Commission, or the Zoning Commission upon its own motion, may request that a matter be placed on the Consent Calendar. Such request shall be in writing, stating the nature of, reasons and grounds for the minor modification or technical correction and shall include a copy of any original Zoning Commission final order, map, plan, rulemaking or other action or relief proposed to be modified or corrected.

3030.3 All written requests for placement of a matter on the Consent Calendar shall be made to the Director of the Office of Zoning. All written requests shall be served by the moving party on all parties in the original proceeding at the same time that such request is served on the Director of the Office of Zoning. The Director of the Office of Zoning, at the Director's sole discretion, shall determine the appropriate form of public notice and any additional service, and will take into account the nature of the request, and any issues relating to efficiency and fairness.

3030.4 Within seven (7) days after a request to put a matter on the Consent Calendar has been filed and served, any other party may file a response in opposition to or in support of the request. The responding party shall serve all other parties at

the time that such response is filed with the Office of Zoning.

3030.5 The Director of the Office of Zoning shall provide written comments and recommendations to the Zoning Commission on each request for placement of a matter on the Consent Calendar. In reviewing requests for placement of a matter on the Consent Calendar, the Director of the Office of Zoning may request advice from other District agencies, including the Office of the Corporation Counsel.

3030.6 Based upon the written request for placement of a matter on the Consent Calendar, all supporting and opposing submissions and the reports of other District agencies, the Director of the Office of Zoning shall determine which matters shall be placed on the Consent Calendar for consideration and action by the Zoning Commission without public hearing at its monthly meeting. Any member of the Zoning Commission may remove any item from the Consent Calendar for any reason. Any matter which is not placed on the Consent Calendar or is removed from the Consent Calendar shall be acted upon by the Zoning Commission according to the applicable procedures contained in other sections of this Title.

3030.7 All relief granted by the Zoning Commission under this section shall be consistent with the intent of the Zoning Commission in approving its original order, map, plan, rulemaking or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.


Vote of the Zoning Commission taken at the December 14, 1992 monthly meeting: 3-0 (Maybelle Taylor Bennett, Tersh Boasberg and John G. Parsons, to approve as amended - William L. Ensign and Lloyd D. Smith not present, not voting).


This order was adopted by the Zoning Commission at its monthly meeting on May 10, 1993 by a vote of 3-0 (Maybelle Taylor Bennett, Tersh Boasberg and John G. Parsons, to adopt as amended - William L. Ensign, not voting, not having participated in the case; Lloyd D. Smith, not present, not voting).

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In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is on

JUN 11 1993.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning

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